PUBLIC PROSECUTOR v. WOONG KWANG SOON & ANOR.

[O. Cr. J. (Laville J.) October 21, 1948]

[Johore Bahru — Emergency Case No. 8 of 1948]

Criminal law — Participation in act prejudicial to public safety — Burden of proof — Emergency Regulations, 1948, reg. s. 4.

In this case the accused were charged that they were in the company of one Chan Ah Kwang, who had in his possession a revolver and ammunition and that they were found in such circumstances as to raise a reasonable presumption that they intended to act or had recently acted with the said Chan Ah Kwang in a manner prejudicial to public safety or the maintenance of public order. The evidence showed that Chan Ah Kwang was arrested in possession of an unauthorised revolver and that the two accused were present at a kongsi house and that they ran out of it at the same time or very shortly after Chan Ah Kwang ran out of it.

Held: (1) the circumstances from which a reasonable presumption of past or imminent or future danger to public safety or the maintenance of public order can be drawn have to be proved by the prosecution; (2) unless the only reasonable presumption from the circumstances is that of intended or actual participation in an act prejudicial to public safety, the accused is entitled to the benefit of any other reasonable presumption indicating innocence; (3) in this case it could be said that the flight of the accused from the house was a conclusive or even a probable indication that they had guilty knowledge or intention and as there was no proof of any intended or imminent or past act by the accused prejudicial to public safety or the maintenance of public order, the accused must therefore be acquitted.

TRIAL OF EMERGENCY CASE.

W. M. McCall (D. P. P.) for the Public Prosecutor.

Accused in person.

Laville J. : — In this case these two accused are charged that they on 18th August, 1948, at the 8th mile Yong Peng — Paloh Road, in the State of Johore, were found in the company of another person, namely, Chan Ah Kwang, who had in his possession a .38 revolver and 12 rounds of .38 ammunition, contrary to reg. 4 of the Emergency Regulations, 1948, and that these two accused were found in his company in circumstances which raised the reasonable presumption that they intended to act, or had recently acted, with the said Chan Ah Kwang in a manner prejudicial to public safety or maintenance of public order.

The prosecution evidence has proved that this man, Chan Ah Kwang, was committing an offence against reg. 4 of the Emergency Regulations; he was arrested in possession of an unauthorised revolver. The prosecution have also proved that the two accused were present in a kongsi house out of which Chan Ah Kwang ran immediately before he was arrested. The prosecution case is that those circumstances amount to sufficient grounds for presuming that the accused persons were acting with Chan Ah Kwang in some way prejudicial to public safety of the maintenance of public order.

In a case like this the circumstances from which a reasonable presumption of past or imminent or future danger to public safety or the maintenance of public order have to be proved by the prosecution. The prosecution in this case rely practically solely on the fact that the two accused ran out of this kongsi house at the same time as, or very shortly after, Chan Ah Kwang who was arrested in possession of an unlicensed revolver, and that they ran off, including Chan Ah Kwang, even before the police party who was approaching the house challenged them or spoke to them.

In my opinion, in order to affect the accused with guilt, there must be proof that the unlicensed arms holder was about to act in a manner prejudicial to public safety or had so acted. If that is proved, then it must be shown that the circumstances in which the accused were consorting with, or found in the company of the unlicensed arms holder were such that a reasonable man could conclude that the accused had taken part in the act, or intended act, proved against the unlicensed arms holder, or intended to do so or was in the act of doing so. In order to presume this there must be some evidence to indicate that the accused knew or had reason to believe that such an act was intended or in train.

The only evidence in this case that such an act was intended or had been committed is the fact that the unlicensed arms holder was seen running from the house with a pistol in his hand. There is no evidence to show whether he drew this pistol or whether the accused had knowledge that he had such a weapon, or had any knowledge of any intention or act on the part of the gunman which was dangerous to public safety or contrary to the maintenance of public order. As to the evidence that the gunman and the two accused ran out of the house even before the police challenged them, unless the only reasonable inference from this is that the accused knew of the gunman's possession of the gun, or any intention on his part to act in a manner prejudicial to public safety, it would not be safe to accept it as a basis of a presumption involving guilt.

The evidence is that the gunman ran one way and the two accused in another, and there is a conflict of evidence as to whether one of the accused ran at all. (No. 2 accused's evidence is that he did not run away and that he was arrested inside the house). The fact of flight at the approach of the police by uneducated people of this calibre in this country is far from being a conclusive or even a probable indication that the people who run have guilty knowledge or intention. In my view, unless the only reasonable presumption from the circumstances is that of intended or actual participation in an act prejudicial to public safety, the accused are entitled to the benefit of any other reasonable presumption indicating innocence.

I cannot say that the flight from the house has only one reasonable explanation, nor is there any proof of any intended or imminent or past act by the accused prejudicial to public safety or the maintenance of public order, and I therefore acquit the accused.

Accused acquitted.

CHAN SAU CHOON (f) v. FOONG SEONG.

[C. A. (Willan C.J., Spenser Wilkinson and Russell JJ.) October 30, 1948]

[K. L. — F.M. Civil Appeal No. 2 of 1948]

Practice — Civil Procedure Code (Cap. 7), s. 597 — 1935 Rule No. 1, sub-rr. 15 and 16(ii) — Appeal dismissed where appellant is not present — Application for re-instatement of appeal.

In this case the appellant was not present in person or by advocate at the adjourned hearing of the appeal and the Court of Appeal acting under 1935 Rule No. 1 sub-r. 15 dismissed the appeal. The appellant applied to the Court that the appeal be re-instated for hearing.

Held: (1) the Court has no power to re-instate for hearing an appeal which had been dismissed under 1935 Rule No. 1 sub-r. 15; (2) that even if the Court had the power, it would not exercise it in this case, as the appellant had on the facts no merits in her favour.

Cases referred to:—

(1) *Sabitri Thakurain v. Savi* 48 I.A. 76 at p 85.

(2) *Magnus Spanier v. Marchant* (1878) W.N. 214.

MOTION.

M. Edgar for the appellant.

J. M. Lewis for the respondent.

Willan C.J. (with whom **Spenser Wilkinson** and **Russell JJ.** agreed): — This was a motion by the appellant (plaintiff at the original trial) that the order of the Court of Appeal made on the 6th of July, 1948, dismissing the appeal for the non-appearance of the appellant, when the appeal was called on for hearing, be set aside, and that the appeal be re-instated for hearing.

The motion contained other prayers, but Mr. Edgar, counsel for the appellant, abandoned them on the hearing of the motion.

The history of the appeal is set out in the Grounds of Judgment of the Court of Appeal dated the 30th of July, 1948. Briefly, the history is as follows.

This appeal first came before the Court of Appeal at its sittings in Ipoh on the 21st of June, 1948. The appellant, though represented by two counsel at the original trial, did not engage counsel to conduct her appeal. When the appeal was called on for hearing on the 21st of June, 1948, the appellant was absent. She had written two letters applying for an adjournment to the next sittings of the Court of Appeal. (Those sittings were listed to commence at Kuala Lumpur on the 5th of July, 1948). The first letter is dated the 19th of June, 1948, and is addressed to the Assistant Registrar, Supreme Court; it has a document attached to it purporting to be a medical certificate by a doctor. The second letter is dated the 21st of June, 1948, and is addressed direct to the Judges of the Court of Appeal. It also has a document attached to it purporting to be a medical certificate by another doctor. The Court of Appeal at Ipoh, although the application for an adjournment was not made in accordance with sub rule 4(i) of 1935 Rule No. 1 (which states that all applications to the Court of Appeal shall be made by Notice of Motion), and although the said documents had not been proved, granted the appellant's application for an adjournment and postponed the hearing of the appeal to the next sittings of the Court of Appeal commencing at Kuala Lumpur on the 5th of July, 1948. This appeal having been listed for hearing at Kuala Lumpur on the 5th of July 1948, the appellant, on the 28th of June, 1948, wrote another letter addressed to the Assistant Registrar, Supreme Court, stating that she came out of hospital on 26th June, 1948, and now required another adjournment so as to engage counsel. She followed up that letter with a still further letter dated the 2nd of July, 1948, addressed to the Registrar, Supreme Court, applying for this further adjournment, but this time on the ground that she was ill and had gone back to hospital. Attached to this letter there were two documents purporting to be medical certificates by two doctors. On 6th July, 1948, this appeal was called on for hearing in the presence of two counsel for the respondent. No counsel appeared for the appellant nor did she, herself, appear.

The Court of Appeal on the 6th of July, 1948 dismissed the appeal for default on the part of the appellant under sub-rule 15 of 1935 Rule No. 1. That sub-rule so far as it is relevant, is as follows:—